

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Monday, March 20, 2017

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Siddoway, Vice Chairman Hagedorn, Senators Davis, Hill, Winder, Lodge, Lakey, Stennett, and Buckner-Webb

**ABSENT/
EXCUSED:** None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Siddoway** called the Senate State Affairs Committee (Committee) to order at 8:00 a.m. and welcomed the Committee and guests.

**VOTE ON
GUBERNATORIAL
APPOINTMENT:** **The Gubernatorial appointment of Mary E. Hughes to the Idaho Endowment Fund Investment Board.**

Senator Winder stated he serves on this Board and is of the opinion Ms. Hughes will be a good addition to the Board and will fill in with the knowledge that Gavin Gee's absence will necessitate. **Senator Winder** moved to send the Gubernatorial appointment of Mary E. Hughes to the Idaho Endowment Fund Investment Board to the Senate floor with the recommendation that she be confirmed. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

RS 25577: **RELATING TO THE EMPLOYMENT SECURITY LAW to revise the average high cost multiplier.**

Mark Warbis, Office of the Governor and Liaison for the Department of Labor, stated **RS 25577** called for a reduction in the multiplier to the unemployment insurance tax rate (see attachment 1).

MOTION: **Senator Davis** moved to send **RS 25577** to print. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

RS 25562: **RELATING TO THE IDAHO UNBORN INFANTS DIGNITY ACT to revise provisions regarding prohibitions.**

Senator Bayer, District 21, began the presentation.

MOTION: **Senator Davis** moved to print **RS 25562**. **Senator Buckner-Webb** seconded the motion. The motion carried by **voice vote**.

S 1182: **RELATING TO CHILDREN to revise a definition and provision regarding treatment by prayer and to consider wishes of a child.**

Chairman Siddoway gave instructions for rules for testimony and explained about the interim committee. He explained that an interim committee met during the summer and heard testimony from both sides of this issue. That testimony is available online. Today's debate was on **S 1182** and the provisions of the bill. The Committee was here to talk about the sections of the modifications of the statute. He said there is a lot of emotion on both sides of the issue, and he asked that testimony be pertinent to the bill.

Senator Dan Johnson, District 6, presented **S 1182**. He stated the Idaho Legislature was asked to put together a working group to study the children at risk whose families declined to provide medical care based on religious beliefs. The goal was to reach a balance between protecting children and honoring parents' free exercise of religion. The Idaho Child Fatality Review Team (ICFRT) report first raised the concern of fatalities due to medical neglect. The ICFRT was formed by the Governor's Children At Risk Task Force under executive order to review deaths to children under the age of 18. The team was tasked with identifying information and education needed to improve the health and safety of Idaho's children. Their goal is to identify common links in deaths that may be addressed to prevent similar future tragedies. **Senator Johnson** read from the ICFRT 2013 report, which was released in 2016; it is a list of causes of death. The report stated it was difficult to estimate the number of childhood deaths due to medical neglect since vital statistics does not compile the number of deaths to children who are not treated medically on the basis of religious beliefs. The team reported five infant deaths may have been prevented with timely medical treatment. **Senator Johnson** read from Idaho Code (I.C.) §§ 16-1627 and 18-1501 in regard to religious beliefs and medical care. The ICFRT identified and advocated for changes in legislation on religious shield laws in the past. A bill seeking to modify the religious exemption was originally proposed to the Idaho Legislature in 2014. From the latest report, the ICFRT position today is that current exemptions may prevent authorities from investigating and monitoring neglect cases and discourage reporting of these incidents. **Senator Johnson** reviewed the history of Idaho's exemption laws.

Senator Johnson stated that most states offered some level of exemption for religious practices. The Children at Risk Faithfully Working Group identified potential actions: the Legislature could leave the exemptions as currently written; the Legislature could broaden the exemptions; and the Legislature could modify the exemptions and limit State intervention. A fourth option is to remove the exemptions and redirect the defense for all religious beliefs and practices to Idaho's Free Exercise of Religion Act found in Title 73, Chapter 4, Idaho Code. The last action was to modify the exemptions and implement reporting. He summarized the report: we believe that religious beliefs and practices should continue to be recognized as methods of treatment in health care choices in Idaho.

Senator Johnson reviewed specific lines in the bill. He discussed which lines were removed, which were restated, and which were added.

Senator Stennett asked if the language was contradictory or vague. Who determined whether the parent was neglectful? What about parents who may seek alternative medical treatment; would they be criminalized?

Senator Johnson replied Idaho Code does not deal with Title 18 which are criminal codes. If the court has knowledge, it can intervene and seek medical intervention for the child. The court has to consider any treatment given to the child by spiritual means; that would be an acceptable form of health care treatment. This bill is expanded to say that the child's wishes will be included.

Senator Stennett asked if someone went to a doctor, but chose not to take the doctor's recommendation, would they be punished? **Senator Johnson** said the type of medical neglect or malpractice would probably be under separate title and chapter. **Senator Stennett** said she was not clear who determined whether parents were neglectful or following religious beliefs.

Senator Johnson responded if there were a question, the law as it pertains to parents who practice healing through spiritual means, have a defense to that; it is in the current statute. When it comes to emergency medical treatment and the courts getting involved, the court can order care, but they have to consider religious medical treatment by the parents. The decision of neglect is covered in current statute.

Senator Hill asked for clarification regarding I.C. §§ 73-402 and 73-403.

Senator Johnson said the current exemptions only refer to Title 16. In the current Title 16, there is no qualifier which makes the spiritual exemption unavailable if the child's well-being is seriously threatened. The change in the statute says on page 5, lines 4-5, "unless the failure to receive medical treatment is likely to result in serious permanent injury or death." That is a qualifier. That says to parents that they do not have automatic defense; under the Free Exercise of Religion Protection Act, everyone would be treated the same. Any action the Legislature takes must still conform to Title 73, Chapter 4, Idaho Code.

Senator Buckner-Webb asked at what age a child's wishes would be considered. **Senator Johnson** replied the courts would have to consider the age and development of the child then make a consideration. **Senator Buckner-Webb** asked if other forms of non-traditional healing mechanisms are covered under this legislation.

Senator Johnson replied no.

Chairman Siddoway said he had about 30 names of people who asked to testify. The Committee would not have time to hear everyone. He asked those who wanted to testify not to repeat what had already been said. Testimony would be limited to 3 minutes.

TESTIMONY:

Linda Martin, representing children who have perished because of faith healing, stated prayer alone is not medical care. The free exercise of religion does not give people the right to harm another person. This bill will put more children at risk. She would like to see children have the right to grow up and make this decision for themselves. **Senator Hill** asked if the choice was to leave the statute as it is currently, or to adopt **S 1182**, did she have a preference? **Linda Martin** replied she would prefer to leave the statutes the way they are now.

Sherry Iverson, Executive Director of the Idaho Chapter of the American Academy of Pediatrics, said the mission of the pediatricians in Idaho was to help children reach their full potential. That required education, prevention, and medical services from the time of birth until the age of 18. The pediatricians in Idaho are very concerned about the proposed changes to **S 1182**. The bill is dangerous in regards to the religious exemptions to parents who rely on prayer.

Bruce Wingate, representing the Protect Idaho Kids Foundation, said **S 1182** addressed parental rights, but did little to protect children from medical neglect; children can not protect themselves, and the State has the duty to protect them. According to the Idaho Constitution, the rights of parents must have limits. If they are harming children, they have gone beyond the limits that a civil society and a responsible government should allow. He entered his written testimony for record. Mr. Wingate asked that his written statement be included in the record (see attachment 2).

Jim Jones submitted written testimony in his absence due to major illness (see attachment 3).

Sheriff Donohue, Canyon County Sheriff's Office, said he was opposed to **S 1182**. He took an oath to protect all citizens. When people are exempt from the law, it is in conflict with the rule of law; we are a nation of laws. He has had three deaths in his county alone in the last four months. As a law enforcement officer, his hands are tied in these cases. He said the State needs to move forward and do something with this. A small minority of people should not be allowed to neglect children to the point of dying needlessly. To ask a child to decide for themselves would not work, because children would copy their parent's wishes.

Senator Davis said the bill did not say the child got to decide. To suggest otherwise, is a misstatement. He asked if Sheriff Donohue opposed the bill because it did not go far enough. **Sheriff Donohue** said that was correct. **Senator Davis** agreed there would be children who would parrot what their parents tell them. This bill put somebody in between the child and the parent if the court or law enforcement is aware. The wishes of the child are considered, but that does not necessarily mean they are determinative of what will happen. He asked if he was misreading the bill.

Sheriff Donohue said he did not think Senator Davis was misreading the bill. He would agree with Senator Davis' explanation. He would go back to the fact that law enforcement did not get to that point under current law; officers would not get to the point to pass it on to child services. He would like to table the bill until next session with feedback from law enforcement.

Senator Stennett asked who would be between neglect and religious freedom. **Sheriff Donohue** said that was part of the problem. The Sheriff's department relied on Child Protective Services and Health and Welfare. In these cases, law enforcement did not get the information to intervene.

Senator Hagedorn asked if the religious exemption was removed, what would be the expectation of change from this group? **Sheriff Donohue** said he would hope this group would understand they too live under a nation of laws. The law should be applicable to all equally. People have to conform to the rule of law, or we have chaos. In this instance, we have children dying needlessly.

Nathan Kansas represented himself. He is a member of Followers of Christ Church. He said the church was not exempt from the law. Their children were not neglected. He said thousands of children die from medical malpractice. It was the responsibility of the Legislature to protect freedom of religion. It is up to God to hold the breath of life of every man, woman, and child. He believes he should have the ability to serve God.

Paul Shippey represented himself. He is a member of the Followers of Christ Church. He practices faith healing. He believes faith healing works. The law states that you can practice faith, and you won't be prosecuted for it. It is one form of treatment. To change a law to prosecute anybody that believes in anything other than medical treatment would be discrimination. Medical treatment has not been proven to be without harm. It is a concern to him to see people prosecuted for their belief in God.

Billy Shippey represented himself. He is a member of the Followers of Christ Church. He asked why exemptions were being removed on a certain part of people. Why not all? Why is it only the medical community who can say 'this person could have been saved'? If we were going to legislate, let's legislate by God. Not legislate to one party or another.

Misty Gardner Carlfeldt, Executive Director of Health Freedom Idaho, said religious freedom, although important, was not their mission statement. This was not about freedom of religion at all. It was about parental rights and

medical freedom. This bill was not about saving the lives of children, it is undermining parental rights, and pointing to the medical treatment as standard. She objected to verbiage in the bill. She asked to hold the bill in Committee (see attachment 4)

Sara Walton Brady, represented herself. She is associated with a group called Health Freedom Idaho. She said more babies would be killed legally from abortion in the next two days than have been lost in an entire three years that the Child Fatality Team reported on when there were ten deaths. She asked why there was this focus on a comparatively small number of deaths. Abortion deaths would just be a statistic. There would not be outcry due to medical neglect due to religious beliefs, or that they had a right to life. The mother's health care choice would not be questioned. The State of Idaho protects a mother's choice to kill her baby, and we must not discuss 4,200 abortions. But it is acceptable to scrutinize those who believe that God can heal a child without western medical intervention, and to decrease the rights of those who choose to do differently.

Chairman Siddoway called an end to public testimony. Written testimony would be entered into the journal.

Senator Johnson gave closing statements. He thanked those in attendance. He stated this was a difficult, complex issue and he respected the opinions of those who spoke. He said he respected the efforts of this body in trying to come to a determination of this issue.

MOTION:

Senator Davis moved to send **S 1182** to the floor with a **do pass** recommendation. **Senator Hagadorn** seconded the motion.

Senator Davis spoke to the issue of not protecting the unborn. He said the courts would not let them address that issue. This was a bill with a partial solution, which had a chance to pass. The Supreme Court held that when it came to governmental intrusion on a person's free exercise of religion, the government only had to show it had a rational basis intervening. Prior to that, the standard had been higher scrutiny. The government had to prove it had a compelling governmental purpose, and that governmental action was the least restrictive means possible. The federal government passed the Religious Freedom Restoration Act (RFRA). Idaho passed a RFRA statute to protect religious freedom. If the government wants to intrude on an individual's free exercise of religious rights, the government has to show that it has a compelling governmental purpose. Protecting the lives of children qualifies. In doing so, it does it in the least restrictive means possible. This bill is a step that provides for governmental involvement when it is aware. This gives law enforcement a mechanism to engage. It takes the faith exemption and allows the court to interject itself, for limited purposes, when the failure to receive medical treatment is likely to result in serious permanent injury or death. It allows not only the wishes of the parent, but the wishes of the child to be considered. The absence of a definition of medical treatment is an intentional omission. There are going to be different medical treatments that should be considered. He will support the bill.

Senator Stennett said the bill would not change a lot. We still have the conflict of religious freedom versus child neglect. It further muddies parental rights and their ability to have proper health care for their children. It creates more conflict. She said she could not support this motion, and she asked for a role call vote.

Senator Lakey said this was an extremely difficult decision. He could not put a person exercising their faith and praying to help their child in the same box as somebody that sexually or physically abuses their child to death. He

cannot criminalise a person exercising their faith. This tries to strike a balance between those who would like to leave the blanket exemption in place and those that would like to remove all exemptions. He supports the bill.

Senator Winder thanked Senator Johnson for his work on the Committee. He said the bill tried to strike a balance, but it did not hit it yet. He said he cannot support it.

Senator Hill said this was a very difficult decision to make. Senator Johnson and the team on the working group had worked hard. What they end up with is a bill that nobody seems to like; it goes too far, or not far enough. Issues this important, emotional, and sensitive take steps to move in the right direction. As the bill is evaluated, then the next step can be taken. This is not the last time this issue will be addressed. It is too important. He will support the bill. It attempts to protect the right to life, but also the right to exercise freedom of religion.

Senator Buckner-Webb said there were a multitude of religious traditions in the State. She asked how the legislation would react with other faiths. She is uncomfortable that there is enough agreement between the two differing factions. She stated she will not vote in support of the motion.

Senator Lodge said this had been a long, hard journey. Her district has a lot of members of the Followers of Christ. She has known them to be honest, faithful, good neighbors. They love their families. **Senator Lodge** said she believes in medical intervention as well as prayer. She heard reasons to be against this legislation from views she had not seen before. She does not have enough information to vote for this legislation. She is honored to have served with Senator Johnson.

Senator Hagedorn thanked Senator Johnson and the Senators who served in 2000, when they passed Title 73 Chapter 4, Idaho Code, recognizing protection for all religions. He said we are not there yet. We have to have a better understanding of all religions. He will be voting in favor of this bill.

Chairman Siddoway said that he believed in Divinity. This bill comes as close as we can come right now to intervene. In this situation, the right to life and freedom of religion may clash.

ROLL CALL VOTE: **Senators Hagedorn, Davis, Hill, Lakey** and **Chairman Siddoway** voted aye. **Senators Winder, Lodge, Stennett,** and **Buckner-Webb** voted nay. The motion carried 5-4.

Chairman Siddoway thanked those in attendance, and asked those with written testimony to leave it.

ADJOURNED: Being no further business at this time, **Chairman Siddoway** adjourned the meeting at 9:50 a.m.

Senator Hagedorn
Vice Chair

Twyla Melton, Secretary

Audrey Hays, Assistant Secretary